



Mary's Advocates

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3 December 2015

His Eminence, Francesco Cardinal Coccopalmerio, President  
Pontificium Consilium de Legum Textibus  
Palazzo delle Congregazioni  
Piazza Pio XII, 10  
00193 Roma, Vatican City State

Your Eminence,

**Re: c. 1692 §2 – Questioning Conjunction & Plea for Reconsideration, Particular Response**

Can. 1692 §1. Separatio personalis coniugum baptizatorum, nisi aliter pro locis particularibus legitime provisum sit, decerni potest Episcopi dioecisani decreto vel iudicis sententia ad normam canonum qui sequuntur.

§2. Ubi decisio ecclesiastica effectus civiles non sortitur, vel si sententia civilis praevidetur non contraria iuri divino, Episcopus dioecesis commorationis coniugum poterit, perpenis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

**Questioning Conjunction: Did Incorrect Conjunction get Published in Canon 1692 §2**

I am questioning whether a conjunction was erroneously published as “or” *vel*, when it should be “and” *et*, in canon 1692 §2. Attached in Appendix are the records from *Commissionis Codici Iuris Canonici Recognoscendo* in both original Latin and English. Before a bishop grants permission to a Catholic to initiate a civil divorce, he is to consider whether a civil decree would be contrary to divine law. Another condition to consider is whether an ecclesiastic decree will have civil effects.

In 1971, the conjunction connecting the two conditions the bishop would consider—before granting a party permission to approach the civil forum—was the word “and” *et*. The *Coetus Studii “De Processibus”* from 19 April 1971 shows the consulter’s interest in preventing separations in the civil forum that are contrary to divine law (p. 144-149). In the 1976 *Schema*,

item 61(b) shows the principles for the draft and the conjunction is “and” *et*; however, later in the same document, canon 356 shows the conjunction “or” *vel* (*Schema*, p. XVI, and 82).

In territories in which the civil forum has no-fault divorce, many, if not most, divorces are sought by one spouse when the other has not done anything grave enough to justify separation of spouses. I assert that all civil no-fault divorce is contrary to divine law, because the one causing the break-up (either an abandoner or one who did something grave enough to justify separation of spouses) is not expected to uphold his obligations to the other spouse and children. This gives grave scandal to children. Catholic Psychologist, Richard Fitzgibbons, who directs the Marital Healing Institute, says the conflicts leading to a decision to divorce are often not of a severe nature and most marital problems can be resolved with proper help.<sup>1</sup> Associate Professor of Government, Stephen Baskerville, a recognized expert on no-fault divorce, publicizes the injustice and danger to society caused by no-fault divorce.<sup>2</sup>

If the conjunction in canon 1692 §2 is “or” *vel*, and the bishop could presume that an ecclesiastic decree would have no civil effects, then (based on that presumption alone) he could grant any person permission to approach the civil forum.

The mere fact that one forum has no arranged acceptance of the Church’s teaching and law, seems a ridiculous basis for granting permission for all Catholics to go to the said forum for instruction and implementation of said forum’s plan. For example, consider Planned Parenthood’s abortion practices. The Church’s canon law regarding abortion has no effect on the advice given by Planned Parenthood. If the Church were to give permission for a Catholic to approach Planned Parenthood for that reason alone, the Church would tacitly be condoning abortion.

Moreover, I assert that an ecclesiastic decree could have civil effects in all territories in which the civil forum will allow parties to implement their own separation agreement and plan. An ecclesiastic determination of the parameters of a separation plan that is not contrary to divine law could be adopted by both parties and ratified and recorded in the civil forum.

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<sup>1</sup> <http://www.thecatholicthing.org/2015/11/09/psychological-science-and-the-evaluation-of-nullity/>

<sup>2</sup> <http://www.crisismagazine.com/2009/the-no-blame-game>

## **Plea for Reconsideration of Particular Response, Bishop's Permission Canon 1692 §2**

I am asking you to reconsider Your Eminence's particular response *Riposte Particolari*, dated 4 November 2015, Prot. N. 15181/2015, regarding "Whether or not the diocesan bishop's permission is required for a Catholic to initiate a civil divorce (can.1692 CIC)"<sup>3</sup> See attached.

The response stated, "In practice, this means that where there is no particular legislation or concordat to direct otherwise, and where the ecclesiastical decision has no civil effects (cf. c. 1692 §2 *CIC*), the local bishop's permission would not be an obligation whether juridical or moral."

This seems unsupported for the following reasons:

- The civil forum purports to relieve a Catholic of his obligation to maintain the common conjugal life, but the civil judge has no independent competence to do so. Even if only one party is Catholic, the marriage of Catholics is governed not only by divine law but also by canon law (cf. c. 1059 *CIC*).
- In other canons, the phrase "can permit" applies in situations where the normal lawful situation is defined, and special permission is required for a party to veer outside of the norm. For example, canon 1118 §2 shows that the bishop can grant permission for marriage to be celebrated someplace other than the parish church. Just because the canon says "can permit," it does not mean that a Catholic, on his own authority can marry in any place he chooses. Canon 1692 §2 shows the bishop "can grant permission" for a Catholic to approach the civil forum. Just because a bishop "can permit" a Catholic to initiate a divorce, does not mean that any Catholic on his own authority, can legitimately do so. Consider an example; when a Catholic's neighbor owns a 7-passenger minivan, the owner "can give permission" to the Catholic to borrow the minivan for a family vacation. But this does not mean that the Catholic can decide on his own authority to just take the minivan for a week.
- The normal lawful situation for couples is defined in Canon 104 and 1151. "Spouses are to have a common domicile or quasi-domicile; by reason of legitimate separation or

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<sup>3</sup> <http://www.delegumtextibus.va/content/dam/testilegislativi/risposte-particolari/cic/On%20whether%20a%20bishop%27s%20permission%20is%20needed%20for%20a%20civil%20divorce%20%28can.%201692%20CIC%29.pdf>

some other just cause, both can have their own domicile or quasi-domicile.” ...

“Spouses have the duty and right to preserve conjugal living unless a legitimate cause excuses them.” A Catholic can only legitimately separate on his own authority for two reasons: adultery and danger in delay (cf. cc. 1152 §3, 1153 §1). Separation is a substantively different occurrence than civil divorce. Just because a Catholic can legitimately separate on his own authority does not mean he can initiate a civil divorce on his own authority.

- Civil divorce is legally and factually known to the relatives, friends, and faith community of those involved. Separation (regardless of whether it is accompanied by a civil divorce) is subject to the power of governance of the Church. Therefore, a Catholic should not exercise on his own behalf the power of ecclesiastical governance, or the pastoral and administrative power of the bishop.
- Separation of spouses involves the public good and requires the involvement of the Promoter of Justice (cf. c. 1696 *CIC*). If a Catholic initiates a civil divorce without the bishop’s permission, there is no mechanism to insure the required involvement of the ecclesiastical authority to promote justice and defend the public good, particularly the defense of the rights of the children and an innocent spouse.
- When deciding whether or not to grant permission for a Catholic to initiate a civil divorce, the bishop is supposed to consider the situation “in light of their particular circumstances,” or “after having weighed the special circumstances” *perpensis peculiaribus adiunctis*, (cf. c. 1692 §2c *CIC*). This implies that the bishop or his mandated delegate must learn about the special or particular circumstances of any Catholic that plans to file for civil divorce. The bishop would never learn about the special or particular circumstances of a family, if a Catholic were not required to consult with the bishop before initiating a civil divorce.

Your Eminence’s particular response appears to be contradicting interpretations published by other entities.

The University of Navarra published annotations about canon law for which the English translation was given an endorsement by Cardinal Julian Herranz, who served as the President of the Pontifical Council for Legislative Texts from 1994 to 2007. Annotations from the University

of Navarra show, “Since divorce laws have proliferated in many countries, the need to request the diocesan bishop's authorization is a necessary precaution, which prevents the fostering of trials whose judgments violate precepts of divine law, to the detriment of the spouses and with the risk of scandal to others.”<sup>4</sup>

The Vatican Publishing House *Libreria Editrice Vaticana*, published an instruction about the 1983 Code of Canon law and cases of separation of spouses. In their instruction, it shows, “*Sin embargo, el Can. 1692 § 2 parece requerir de la previa licencia del Obispo de la diócesis de la residencia de los cónyuges —perpensis peculiaribus adiunctis para que estos puedan acudir al fuero civil* [(Tran. from Spanish) However, Can. 1692 §2 appears to require the previous permission of the Bishop of the diocese of the residence of the spouses—*perpensis peculiaribus adiunctis* [particular circumstances]—so that the spouses can approach the civil forum” (page 391).<sup>5</sup>

For the aforementioned reasons, I plead with you to amend your particular response about a Catholic’s obligation to obtain the bishop’s permission before approaching the civil forum.

Respectfully Yours in Christ,

Mrs. Marie (Bai) Macfarlane  
Director, Mary’s Advocates

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<sup>4</sup> Instituto Martin de Azpilcueta. “Code of Canon Law Annotated Second edition revised and updated of the 6th Spanish language edition.” Woodridge, IL: Midwest Theological Forum, 2004.

<sup>5</sup> Diego-Lora, Carmelo De. “*Las Causas de Separación de Cónyuges Según el Nuevo Código.*” *Dilexit iustitiam : Studia in Honorem Aurelii Card. Sabattani*. Libreria Editrice Vaticana: Città del Vaticano, 1984: 389-403.

# ATTACHMENT

## Records from *Commissionis Codici Iuris Canonici Recognoscendo*

**1971 April 19**

Book Title *Communicationes Vol. XL – N. 1 (2008) [Vol. 40]*  
Year Published 2008  
Author *Commissionis Codici Iuris Canonici Recognoscendo*  
Publisher *Pontificium Consilium De Legum Textibus*  
Webpage <http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/deprocessibus/deProcessibus-Sessio-11.pdf>

**Section Header** **Ex actis Pont. Comm. CIC Recognoscendo. Coetus Studii << De Processibus >> Session XI (diebus 19-22 aprilis 1971 habita). Adunatio I. die 19 aprilis 1971 mane habita [Schematis Canonum de Causis Separationis Coniugum]**

Book page number 144-149  
PDF page number 4-9  
Book page quoting 144

Latin (page 144)  
Adunatio I  
die 19 aprilis 1971 mane habita  
Huic adunationi praeest Card. Pericles Felici, Praeses Commissionis. Em.mus Praeses omnibus Consultoribus salutem dicit et quaerit num ipsi approbent Relationem laborum Sessionis Xae, quod attinet sive ad veritatem sive ad integritatem eorum quae referuntur.  
Omnes Consultores Relationem approbant.  
Rev.mus Secretarius exponit ordinem laborum, pro hac Sessione statutum, de examinandis scilicet schematibus canonum: a) de causis separations coniugum; b) de processu dispensationis super matrimonio rato et non consummato; c) de procedura administrativa.  
Card. Praeses monet Consultores examen schematis de procedura administrativa dilatum iri, quia interim, de mandato Summi Pontificis, constituía est specialis Commissio Pontificia, cui munus concreditum est examinandi quaedam documenta, in quibus de iustitia administrativa tuenda cavetur, a quibusdam Conferentiis Episcoporum exarata. Ipsa quoque Commissio specialis munus habet apparandi legem generalem de iustitia administrativa, in quo opere perficiendo schema de procedura administrativa, a parvo Coetu apparatus, complebitur, ratione habita illorum elementorum, quae ex praedictis documentis particularibus desumi poterunt.

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His praemissis incipit examen schematis canonum de causis separationis coniugum.

Rev.mus Relator legit antea schema canonum a parvo Coetu redactum:

Can. 1

§ 1. Causae separationis personalis coniugum baptizatorum ad iudicem ecclesiasticum deferantur, nisi iure particulari aliter caveatur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **et** quando sententia civilis praevидetur non infensa iuri Ecclesiae, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile

[(Mary's Advocates Note) Canons 2-14 of the schema, and discussion have been omitted].

(Page 146)

. . . Rev.mus Relator notat Secretariam opportune parvum Coetum constituisse ad hoc schema apparandum, quia hoc modo basis apta discussionis praebet et celerius conclusiones deliberari possunt. Quae quidem consideratio pari ratione valet etiam pro alio schemate de processu dispensationis super matrimonio rato et non consummato.

Rev.mus Relator monet in hoc schemate de causis separationis coniugum haberi tantum leges adiectivas, quae quidem supponunt leges (Page 147)

substantivas de eadem materia in libro de matrimonio. Praesumitur, ad effectum disponendi sequentes cánones, quod maneat in lege separatio *perpetua* et separatio *temporaria*.

### 1) *De competentia ad huiusmodi causas iudicandas*

Rev.mus Rektor dicit Consultores parvi Coetus censuisse non expedire quod causae separationis demandentur semper civili magistratui quia:

- in can. 1960 (iam recognito) edictum est: «causae matrimoniales baptizatorum iure proprio ad iudicem ecclesiasticum pertinent »;
- plura matrimonia sunt aliquando tantummodo canonica;
- in iure civili haud considerantur quaedam motiva separationis, apud Ecclesiam bene valida;
- si contrarium statueretur, Ecclesia officium et ius suum abdicaret; simulque consequeretur quod separatio contra legem divinam frequenter imponeretur vel denegaretur;
- separatio, in foro civili statuta, esset saepe basis supra quam, elapso statuto tempore, ipso iure inscriberetur divortio.

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Attamen nec parva sunt incommoda duplicis iurisdictionis, quia, ad habendos civiles effectus circa pensionem et iura oeconomica, circa custodiam filiorum etc., pars cuius interest debet quoque adire forum laicum. Consequenter adest periculum fastidii et iacturae temporis et pecuniae pro partibus et possibilitas duarum decisionum quae sint sibi invicem contrariae et praeterea executio sententiae canonicae potest haberi ut delictum in foro civili, v.g. ob desertionem domicilii coniugalis et ita porro.

Ideo parvus Coetus proponit formulam, quae, salvo iure particulari (ut sunt concordata), ex una parte non abdicat ius et officium Ecclesiae et, ex alia parte, ita sit flexibilis ut magna ex parte supradicta incommoda vitentur.

Can. 1

§ 1. Causae separationis personalis coniugum baptizatorum ad iudicem ecclesiasticum deferantur, nisi iure particulari aliter caveatur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **et** quando sententia civilis praevidetur non infensa iuri Ecclesiae, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

(page 148)

Rev.mus primus Consultor proponit ut § 1 ita mutetur: « Salvo iure particulari, causae separationis coniugum catholicorum ad iudicem ecclesiasticum deferantur». Hoc modo principium competentiae omittitur quia iam habetur in can. 1960, et lex restringitur ad solos catholicos.

Alii Consultores retinere volunt in hoc canone principium competentiae.

Ad subiectum huius legis quod attinet, Consultores praeferunt locutionem « coniugum baptizatorum » sive quia ius particulare (« nisi iure particulari aliter caveatur») potest restringere legem ad solos catholicos (Rev.mi Secretarius et secundus Consultor), sive quia si diceretur «coniugum catholicorum » statim surgeret quaestio de matrimoniis mixtis (Rev.mus tertius Consultor).

Rev.mus quartus Consultor vellet dare competentiam harum causarum magistratui civili ita ut lex ita sonare deberet: «Causae separationis... ad iudicem civilem deferantur, nisi iure particulari aliter caveatur ».

Rev.mus Secretarius, contra Rev.mum quartum Consultorem, animadvertit causas separationis esse principaliter causas spirituales ideo non posse ex lege generali ad iudicem laicum deferri. Peculiares autem necessitates locales solvi possunt per legem particularem quae aliter cavere potest.



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Rev. mus quartus Consultor instat in eo quod separado inducitur ex propria volúntate coniugum, ideo iudex nihil habet iudicandum sed tantum subscribere debet talem decisionem et effectus civiles statuere.

Rev. mus primus Consultor negat talem sententiam Rev. mi quarti Consultoris, quia causae separationis induunt rationem boni publici et ideo a publica auctoritate resolvi debent.

Suffragatur placeatne § 1 prout proposita a Rev. mo Relatore:

placet n. 6; non placet n. 1.

Ad § 2 quod attinet, Rev. mus primus Consultor censet distinguendas esse causas quae directe respiciunt bonum spirituale et causas quae directe respiciunt bonum temporale etsi adnexum sit bonum spirituale. Istae deferri possunt etiam ad forum laicum, illae autem semper deferri debent ad iudicem ecclesiasticum.

Rev. mus Secretarius dicit quod si iudex laicus videret tales causas iure proprio, eius competentia extenderetur etiam ad effectus qui sunt ordinis ecclesiastici, quin dicatur quod perdifficile esset in singulis casibus iudicare utrum causa sit directe de bono spirituali an de bono temporali.

Rev. mus Relator censet quod causa separationis in se ipsa est semper causa spiritualis ex qua dimanare possunt etiam effectus ordinis temporalis, ideo forum ecclesiasticum ius nativum habet videndi tales causas.

(page 149)

Rev. mus primus Consultor declarat se non voluisse impugnare competentiam iudicis ecclesiastici sed tantum normam practicam dare, scilicet ubi de bono temporali coniugis vel prolis agatur causae separationis deferantur (non pertinent) ad iudicem laicum.

Suffragatur placeatne § 2 prout proposita a Rev. mo Relatore:

placet n. 6; non placet n. 1.

English

[Translation by St. Louis Sanchez]<sup>6</sup> Gathering I. On the 19th day of April 1971 – held in the morning

Cardinal Pericles Felici, president of the Commission, presided over this gathering. His Eminence greeted all of the consultors and asked whether they themselves approved the report of the work of Session X, with regards to the truth or to the correctness of it which they produced.

All consultors approved the report.

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<sup>6</sup> Translation from Anthony St. Louis Sanchez  
[http://www.academia.edu/6096431/The\\_Canonical\\_Obligation\\_of\\_Spouses\\_to\\_Approach\\_the\\_Ecclesiastical\\_Authority\\_for\\_a\\_Separation](http://www.academia.edu/6096431/The_Canonical_Obligation_of_Spouses_to_Approach_the_Ecclesiastical_Authority_for_a_Separation)

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The secretary explained the order of the work, established by this Session, namely considering the arrangement of the canons: a) about cases of separation of spouses; b) about the dispensation of a ratified and non consummated marriage; c) about the administrative procedure.

[Translation by Google Translate] Card. Warns the President of the Consultors would be put off for the examination of the draft of the administrative of the procedura, because in the meantime, by a mandate of the Supreme Pontiff's intentions, there is a special set up the Pontifical Commission, whose duty it is a kind of the documents to be examined, in which the administrative of justice is provided by the defense, and by some of the Conferences of Bishops of Lancaster. She also has the function of a special Commission of the righteousness of the preparation for the general administrative law, in which the scheme of perfecting a work of the procedura administrative, from the small Assembly of the equipment, it shall be fulfilled, taking account of these elements, which will be able to be taken out of the aforementioned documents of the particular.

[continue translation by St. Louis Sanchez] With this having been prefaced, the consideration of the arrangement of the canons about cases of separation of spouses began.

The relator formerly chose the arrangement of the canons treated by the little group:

#### Can. 1

§ 1. The personal cases of separation of spouses of the baptized are to be introduced to an ecclesiastical judge, unless otherwise provided by particular law.

§ 2. Where an ecclesiastical decision does not receive civil effects, **and** when the civil decision is not foreseen to be hostile to the law of the Church, the ordinary of the residence of the spouses will be able, in individual cases, with the particular circumstances having been weighed carefully, to give permission to approach the civil forum.

[(Mary's Advocates Note) Canons 2-14 of the schema, and discussion have been omitted].

. . . The relator noted that the secretary had fittingly established the little group to prepare this arrangement, because in this way a suitable basis of discussion is provided and the conclusions are able to be deliberated more swiftly. Indeed, for the same reason this consideration applies also for the other arrangement concerning the process of dispensation a ratified and not consummated marriage.

The relator called to mind that in this arrangement of cases of the separation of spouses there are only disciplinary laws, which indeed presuppose the substantial laws about the same material in the book

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about marriage. It is presumed, for the execution of arranging the following canons, that the perpetual and temporary separation should remain in the law.

1) *Concerning the competence for judging these kinds of cases*

The relator said that the consultors of the little group had offered the opinion to not disentangle which cases of separation should always be entrusted to the civil magistrates because:

- in can. 1960 (already examined) it was declared: “matrimonial cases of the baptized belong by proper right to the ecclesiastical judge”;
- several marriages are sometimes merely canonical
- if the contrary were established, the church would renounce its own duty and right; and at the same time it would follow that a separation against the divine law would frequently be imposed or denied;
- separation, established in the civil forum, if it were to be always of the foundation above, with the lapse of time, divorce would be inscribed in the law itself. But yet the disadvantages are not small of a double jurisdiction, because, to have civil effects about a pension and economic rights, about custody of children etc., the party of whom it concerns must also approach the lay forum. Consequently, the danger of aversion is present and the loss of time and money for the parties and the possibility of two decisions which are mutually contrary to themselves and further the execution of the canonical decision can be obtained as a crime in the civil forum, e.g., because of desertion of the conjugal dwelling and so on. Therefore the little group proposed the formula, which, without prejudice to particular law (as concordats are), on the one hand does not renounce the right and duty of the Church and, on the other hand, is so flexible that in large part the aforementioned disadvantages could be avoided.

Can. 1

§ 1. The personal cases of separation of spouses of the baptized are to be introduced to an ecclesiastical judge, unless otherwise provided by particular law.

§ 2. Where an ecclesiastical decision does not receive civil effects, and when the civil decision is not foreseen to be hostile to the law of the Church, the ordinary of the residence of the spouses will be able, in individual cases, with the particular circumstances having been weighed carefully, to give permission to approach the civil forum.

The first consultor proposed that § 1 be changed thus: “Salvo iure particulari, causae separationis coniugum catholicorum ad iudicem ecclesiasticum deferantur [Without prejudice to particular law, cases of

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separation of catholic spouses are to be brought to an ecclesiastical judge.]” In this way the principle of competence is omitted because it is already considered in can. 1960, and the law is restricted to Catholics alone.

Other consultors wished to retain the principle of competence in this canon.

With regard to the subject of this law, the consultors preferred the saying “coniugum baptizatorum [of baptized spouses]” whether because the particular law (“nisi iure particulari aliter caveatur [unless otherwise provided by particular law]”) is able to restrict the law to Catholics alone (the secretary and second consultor), or because if it were said “coniugum catholicorum [of Catholic spouses]” immediately there would arise the question about mixed marriages (the third consultor).

The fourth consultor wished to give competence of these cases to the civil magistrates so that the law would have to resound: “Causae separationis...ad iudicem civilem deferantur, nisi iure particulari aliter caveatur [Cases of separation...are to be introduced to the civil judge, unless otherwise provided by particular law].”

The secretary, against the fourth consultor, perceived the cases of separation to be principally spiritual cases therefore they are not able to be introduced to lay judges in the general law. However, particular local necessities can be resolved through particular law which it can otherwise provide for.

The fourth consultor insisted on it because separation is introduced from the particular will of the spouses, therefore the judge has nothing to judge but must only endorse such a decision and set up the civil effects.

The first consultor denied such an opinion of the fourth consultor, because cases of separation surround the reason of the public good and therefore they must be resolved by a public authority.

It was voted whether § 1 is agreeable as proposed by the relator:

Yes: 6; No: 1

For what pertains to § 2, the first consultor offered the opinion that the cases must be distinct which directly concern the spiritual good and cases which directly concern the temporal good even if it be connected to the spiritual good. The latter are also able to be introduced to the lay forum, but the former must always be introduced to the ecclesiastical judge.

The secretary said that if the lay judge were to consider such cases by proper right, his competence would be extended also to effects which are in the authority of the church, but it should not be said because it would be very difficult in individual cases to judge whether a case is directly about the spiritual good or about the temporal good.

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The relator offered the opinion that a case of separation is always in itself a spiritual case from which can also emanate effects of the temporal order, therefore the ecclesiastical forum has the innate right of considering such cases.

[Translate Google] Rev. first counselor declares that he does not intend to challenge the competence of the ecclesiastical judge, but only in accordance with the practice of giving the spouse or child of time where good cause is a question of the separation of the reports (not connected) to a lay judge.

It was voted whether § 2 is agreeable as proposed by the relator:  
Yes: 6; No: 1

**Section Header**      *Ex Actis Pont. Comm. CIC Recognoscendo. Appendix Schema Canonum. I. De Causis Separationis Coniugum*

PDF page number      22  
Book page quoting      162

Latin                      Can. 1

§ 1. Causae separationis personalis coniugum baptizatorum ad iudicem ecclesiasticum deferantur, nisi iure particulari aliter caveatur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **et** quando sententia civilis praevidetur non infensa iuri Ecclesiae Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

English                      Can. 1 [(Mary's Advocates note) this is identical to that on page 144]

§ 1. The personal cases of separation of spouses of the baptized are to be introduced to an ecclesiastical judge, unless otherwise provided by particular law.

§2. Where an ecclesiastical decision does not receive civil effects, **and** when the civil decision is not foreseen to be hostile to the law of the Church, the ordinary of the residence of the spouses will be able, in individual cases, with the particular circumstances having been weighed carefully, to give permission to approach the civil forum.

1976, November 3rd

### **1976 November 3**

Book Title ***Schema Canonum de Modo Procedendi Pro Tutela Iurium Seu De Processibus***  
Year Published 1976 [*Notificatio die 3 novembris 1976*, page 2 in pdf]  
Author *Pontificia Commission Codici Iuris Canonici Recognoscendo*  
Publisher *Typis Polyglottis Vaticanis*  
Webpage <http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/deProcessibus.pdf>

#### **Section Header *Notificatio, Romae, die 3 novembris 1976***

Book page number none  
PDF page number 2

#### **Section Header *Praenotanda: V. De Processu Conentioso Summari. Item 48 De obeicto processus summarii***

PDF page number 12  
Book page quoting 13 (XIII)

Latin 48. De obiecto processus summarii.  
a) Quae materiae dilui possint per istum alveum, pendet partim a iure communi, partim a iure particulari.  
b) De iure communi proposito in adnexo schemate demandantur huic novae formae processuali: **causae separationis coniugum (can. 357)**; causae incidentales (can. 246); causae de querela nullitatis (can. 284); nova causae propositio (can. 308);  
c) De iure particulari, lege a Conferentia Episcopali lata, determinationes peculiare haberi possunt circa usum huius processus (can. 318).

English [Translation Google Translate]  
48. The process of the Statement object.  
a) What is the investigation of the matter can be disposed of by means of this channel, bleeding, and partly by the common law, and partly to a particular law.  
b) Concerning the right to the common point in the form attached to the diagram of the procedural law to this new and commits to him: **the cause of the separation of the couple (can. 357)**; incidentales the cause (can. 246); Cases concerning a plaint of nullity (can. 284); the new proposition of the cause (can. 308);  
c) Concerning the right of a particular case, the law was passed by the Conference of the Episcopal, the determinations of the special

character can not be understood with regard to the use of this process (can. 318).

**Section Header**      **Praenotanda: VII. De Causis Separationis Coniugum. Item 60 & 61**

PDF page number      15

Book page quoting      16 (XVI)

Latin      60. Cum in libro IV CIC nullibi sit sermo de huiusmodi causis, potius quam de recognitione, agitur de constructione nunc primitus facienda.

*Principia quae direxerunt redactionem schematis*, haec praecipue fuerunt:

a) Visum est imprimis *non expedire* quod causae separationis demandentur semper civili magistratui, idque pluribus de rationibus, sed praesertim ex declaratione can. 335;

b) ex alia parte consideratum est *nec parva esse incommoda duplicis in hoc re iurisdictionis*, ex qua contrariae decisiones dimanare possent;

c) Insuper sarta tecta servanda erant *iura particularia*, statuta praesertim in Concordatis;

d) Agnoscenda erat quoque facultas coniugis agitandi causam separationis via iudiciaria: de quo iure antea dubitabatur, adeo ut interrogata de re fuerit Commissio Interpres (cfr. A.A.S., 1932, p. 234).

61. Ad componenda haec diversa postulata propositum est quod:

a) salvo iure particulari, separatio decerni possit via administrativa vel iudiciaria (can. 356, § 1): in via iudiciaria adhibeatur processus contentiosus summarius, nisi petatur processus Ordinarius (can. 357);

b) quando decisio ecclesiastica non sortiatur effectus civiles, *et* sententia civilis non praevideatur contraria iuri divino, Episcopus poterit, iuxta adiuncta, licentiam concedere ad eundem forum civile (can. 356, § 2);

c) si causa respiciat effectus mere civiles, curandum est ut inde ab initio ad tale forum deferatur (can. 356, § 3)

English      [Translation Google Translate]

60. When questions of this kind we are talking about in the book of 4 Code of nowhere, rather than on the acknowledgment, the construction of the first of all is to be done now.

*Which drew up the draft of the draft principles*, especially these were:

a) in the first place it seemed good to the reason for separation is *not helpful for him that is always demanded from the civil magistrate*, and this is a number of reasons, but above all from the declaration can. 335;

b) on the other hand it was decided that *a two-fold in this is no small matter of jurisdiction to be disadvantages*, from which they could be contrary to the decisions of the stems;

c) In addition, the breaches of the *rights of the particular* were to be observed, especially in the statutes of the Concordatis;

d) the ability to be acknowledged, too, was a cause for separation of his wife they chose the way of the judiciary: there was no question of the same right as before, so that the Commission is being asked of the interpreter to be improper (cfr. AAS, 1932, p. 234).

61. It is proposed to combine these different requirements:

a) without prejudice to the right of a particular situation, be able to decide the way of the administrative or the separation of the judiciary (cf. can. 356, § 1): the judiciary is to be used in the way of the process to be contentious summarius, unless you seek the process of ordinary (can. 357);

b) when the lot by the ecclesiastical decision does not produce civil effects, **and** it is foreseen that a civil sentence is not contrary to divine law, the Bishop will be able to, according to the circumstances, give them permission to approach the civil courts (cf. can. 356, § 2);

c) if the cause of the merely civil effects will look on you, take care of such a forum is to be referred to from the very beginning (cf. can. 356, § 3)

**Section Header**

**Pars Tertia, De Iudiciis Specialibus. Titulus II De Causis Separationis Coniugum**

PDF page number  
Book page quoting

101  
82

Latin

Can. 356 (novus).

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **vel** si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

§ 3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.

English

[Translation Google Translate]

Can. 356 (new).

§ 2. Where the ecclesiastical decision does not produce civil effects by the lot, **or** if a civil sentence is not contrary to the divine law, the ordinary residence of the spouses is made in individual cases, in light of their particular circumstances, give them permission to approach the civil courts.



1976, November 3rd

§ 3. If the case concerns only the merely civil effects of marriage, the judge, after having observed the provisions of § 2, the case brought before the civil court from the very beginning.

### **1976 November 3**

Book Title	<i>Communicationes Vol. XLI – N.2 (2009)</i> [Vol. 41 see page 21 in pdf] <i>Communicationes Vol. VIII – N. 2 (1976)</i> [Vol. 8 pages 184-200]
Year Published	1976 (Notificatio pdf pg 23, , 3 novembris 1976)
Author	<i>Pontificia Commission Codici Iuris Canonici Recognoscendo</i>
Publisher	n/a
Webpage	<a href="http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/deprocessibus/scheMaCanonumLibriVIIIDeProcessibus.pdf">http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/deprocessibus/scheMaCanonumLibriVIIIDeProcessibus.pdf</a>
Section Header	<b><i>Ex Actis Ponti. Comm. CIC Recognoscendo. Pars Tertia, De Iudiciis Specialibus. Secto II De Causis Matrimonialibus. Titulus II De Causis Separationis Coniugum</i></b>
PDF page number	108
Book page quoting	434
Latin	Can. 356 (novus) § 2. Ubi decisio ecclesiastica effectus civiles non sortitur, <b>vel</b> si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile. § 3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.
English	[Translation Google Translate] Can. 356 (new). § 2. Where the ecclesiastical decision does not produce civil effects by the lot, <b>or</b> if a civil sentence is not contrary to the divine law, the ordinary residence of the spouses is made in individual cases, in light of their particular circumstances, give them permission to approach the civil courts. § 3. If the case concerns only the merely civil effects of marriage, the judge, after having observed the provisions of § 2, the case brought before the civil court from the very beginning.

1979, March 31st

**1979 March 31 (die 31 martii 1979)**

Book Title *Communicationes Vol. XI – N. 2 (1979). [volume 11 (1979)]*  
Year Published 1979  
Author *Pontificia Commission Codici Iuris Canonici Recognoscendo*  
Publisher *n/a*  
Webpage <http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/deprocessibus/deProcessibus-SeriesAltera-Sessio-6.pdf>

**Section Header** *Acta Commissionis Opera Consultorum in Recognoscendis Schematibus*

PDF page number 3  
Book page quoting n/a

Latin OPERA CONSULTORUM. IN RECOGNOSCENDIS SCHEMATIBUS  
I  
COETUS STUDIORUM DE PROCESSIBUS  
Praeside Card. Pericle Felici et moderante Exc.mo R.I. Castillo Lara,  
Secretario Commissionis, Relatore Exc.mo A. Sabbatani, Coetus specialis «  
De Processibus» Sessiones habuit diebus 26-31 martii 1979 et 14-18 mai  
1979, in quibus prosecutus est laborem ad examinandas animadversiones  
quae ab organo consultationis prolatae sunt circa Schema canonum de  
iure processuali (cf. Communicationes 10 [1978], pp. 209-272; 11 [1979],  
pp. 67-162).

English [Translation Google Translate]  
OPERA CONSULTORS  
In revising the draft  
1  
ASSEMBLY OF STUDIES OF PROCEDURES  
President Card. Pericle Felici and controlling Exc.mo R.I. Castillo Lara,  
Secretary of the Commission, Exc.mo Reporter A. Sabbatani, a special  
group of "De Processibus" sessions held during 26-31 March 1979 and 14-  
18 May 1979, in which he continued to work to examine the observations  
which were brought about by the organs of the consultation draft of the  
canons by the procedural law (cf. Communicationes 10 [1978], pp. 209-  
272; 11 [1979], pp. 67-162).

**Section Header** *Acta Commissionis. Diei 31 martii 1979. Titulus II De Causis Separationis Coniugum*

Book page number 272-273  
PDF page number 32-33

1979, March 31st

Book page quoting 272

Latin

Can. 356 (novus)

§1. Separatio personalis coniugum baptizatorum, nisi aliter pro locis particularibus legitime provisum sit, decerni potest:

a) Ordinarii decreto, vel

b) Ecclesiastici iudicis sententia ad normam canonum qui sequuntur.

§2. Ubi decisio ecclesiastica effectus civiles non sortitur, **vel** si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

§3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto §2, causa inde ab initio ad forum civile deferatur.

— De sententia quorundam organorum consultationis Titulus de causis separationis posset supprimi, quia coniuges numquam deferunt ad tribunal ecclesiasticum causas separationis, vel posset tota quaestio remitti ad ius particulare.

Consultores omnes, vero, tenent in lege generali deesse non posse hunc titulum, attenta competentia Ecclesiae circa causas separationis coniugum.

— Aliquis Consultor proponit ut in § 1, b, deleatur verbum « ecclesiastici », quod omnibus placet.

— Alter Consultor proponit ut deleantur verba « singulis in casibus », quae habentur in § 2. Suggestio omnibus placet.

— Aliqui Consultores proponunt ut dicatur « servatis cautelis de quibus in § 2 », loco « servato praescripto § 2 », ita ut non requiratur interven tus Ordinarii commorationis coniugum.

Fit suffragatio an placeat haec propositio: placet 3, non placet 5.

English

[Translation. Anthony St. Louis Sanchez]

1979 COETUS ON PROCEDURAL LAW

The Work of the Consultors in Reviewing the Schema

The Study Group “On Procedures”

Gathering on the 31st day of March 1979

Title II. Concerning the Cases of the Separation of Spouses

Can. 356 (new)

§1. The personal separation of baptized spouses, unless otherwise legitimately provided for in a particular place, is able to be decided:

a) By a decree of the Ordinary, or

b) By a sentence of an ecclesiastical judge according to the norm of the following canons.

1979, March 31st

§2. Where an ecclesiastical decision does not obtain civil effects, **or** if the civil sentence is foreseen to be not contrary to divine law, the Ordinary of the residence of the spouses can grant permission to approach the civil forum, in an individual case, after having weighed the particular circumstances.

§3. If a case concerns only the merely civil effects of marriage, the judge, after having observed the prescript of §2, is to try to defer the case to the civil forum from the start.

— Concerning the opinion of a certain organ of consultation, namely that the title about cases of separation should be suppressed, because the spouses never bring cases of separation to the ecclesiastical tribunal, or the whole question should be referred to particular law. However, **all the consultors considered that this title is not able to be absent from the general law, considering the competence of the Church in cases of separation of spouses.**

— Another consultor proposed that in § 1, b, the word “ecclesiastici” be deleted, which was pleasing to all.

— One consultor proposed that the words “singulis in casibus” [in an individual case] be deleted, which are in § 2. The suggestion was pleasing to all.

— Other consultors proposed that it should say “servatis cautelis de quibus in § 2,” [after having observed the precautions mentioned in §2] in place of “servato praescripto § 2,” [after having observed the prescript of §2] so that the intervention of the Ordinary of the residence of the spouses is not required. It was voted whether this proposition was pleasing: Yes: 3; No: 5.

1980, 1981, 1982

### **1980 June 29**

Book Title	<i>Schema Codicis Iuris Canonici. Iuxta Animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecrate recognitum</i>
Year Published	1980 [Praenotanda 29 Iunii 1980. Pdf page 8. Book page X]
Author	Pontificia Commissio Codici Iuris Canonici Recognoscendo
Publisher	Libreria Editrice Vaticana, Typis Polyglottis Vaticanis
Webpage	<a href="http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/schemaCIC1980.pdf">http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/schemaCIC1980.pdf</a>
<b>Section Header</b>	<b><i>Liber VII. De processibus. Pars III. De iudiciis specialibus. Caput II. De Causis Separationis Coniugum</i></b>
Book page number	362-363
PDF page number	384-385
Book page quoting	362
Latin	Can. 1644 - §2. Ubi decisio ecclesiastica effectus civiles non sortitur, <b>vel</b> si sententia civilis praevideatur non contraria iuri divino, Episcopus dioecesis commorationis coniugum poterit, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.
English	[Translation from Vatican's website because matches current CIC] Can. 1644 - § 2. Where an ecclesiastical decision has no civil effects, <b>or</b> if a civil sentence is not contrary to the divine law, the bishop diocese of the residence of the spouses, after having weighed the special circumstances, can grant permission to approach the civil forum.

### **1981 July 16**

Book Title	<i>Relatio. Complectens Synthesim Animadversionum AB EM.MIS Atque EXC.MIS Patribus Commissionis Ad Novissimum Schema Codicis Iuris Canonici Exhibitarum, Cum Responsionibus a Secretari Et Consultoribus Datis.</i>
Year Published	1981
Author	Pontificia Commissio Codici Iuris Canonici Recognoscendo
Publisher	Yada
Webpage	<a href="http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/relatioAnimadversionumadNovissimumSchemaCIC.pdf">http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/relatioAnimadversionumadNovissimumSchemaCIC.pdf</a>

**Section Header** *Praenotanda*

Book page number 5-10  
 PDF page number 3-8  
 Book page quoting 10

Latin Romae, die 19 iulii 1981  
 English Rome, 16<sup>th</sup> day of July, 1981

**Section Header** **Ad, R. (can. 1106, 1108)**

Book page number 265-266  
 PDF page number 263-264  
 Book page quoting 265

Latin Ad can. 1106

Dicatur: « ... ius ipsi est, manente vinculo, solvendi coniugalem convictum », ut pateat quod vinculum matrimoniale non solvi tur separatione (Exc. Henriquez).

R. Non est necessarium. Sufficenter dicitur in inscriptione articuli: « De separatione manente vinculo ».

Ad can. 1108

Dicatur: « Instituta separatione coniugum, opportune semper cavendum est de debiía coniugis innocentis ei filiorum sustentatione, necnon de educatione prolis » (Card. Florit).

R. Quaestio inter effectus mere civiles adnumeratur, quae per se ad tribunal civile spectat (cfr. cann. 1624 et 1644, § 3).

English

Ad can. 1106

Let it be said: «... has the right to, as long as the bond, sever conjugal living," as it is evident that the bond of marriage can not be loosed by the separation of the (Exc. Henriquez).

A. It is not necessary. Enough said in the title of the article: "The separation of the remaining bond. "

Ad can. 1108

Let it be said: "After the separation of the spouses, must always be out of debt the maintenance of an innocent spouse, as well as the education of the offspring "(Card. Florit).

R. The question of the merely civil counted among the effects, which are by their looks to the tribunal civil (Cfr. Cann. 1624 and 1644, § 3).

1980, 1981, 1982

**1982 March 25**

Book Title	<i>Codex Iuris Canonici. Schema Novissimum Iuxta Praecepta Patrum Commissionis Emendatum Atque Summo Pontifici Praesentatum</i>
Year Published	1982
Author	<i>Pontificia Commissio Codici Iuris Canonici Recognoscendo</i>
Publisher	<i>Typis Polyglottis Vaticanis</i>
Webpage	<a href="http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/schemaNovissimumCIC1982.pdf">http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/schemaNovissimumCIC1982.pdf</a>
Section Header	<b><i>Lib. VII – De processibus. Pars III – De quibusdam processibus specialibus</i></b>
PDF page number	313
Book page quoting	293
Latin	CAPUT II. DE CAUSIS SEPARATIONIS CONIUGUM Can. 1692 - § 2. Ubi decisio ecclesiastica effectus civiles non sortitur, <b>vel</b> si sententia civilis praevideatur non contraria iuri divino, Episcopus dioecesis commorationis coniugum poterit, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.
English	CHAPTER 2 CASES OF SEPARATION OF SPOUSES [Translation from Vatican’s website because matches current CIC] Can. 1692 - § 2. Where an ecclesiastical decision has no civil effects <b>or</b> if a civil sentence is not contrary to divine law, the bishop of the diocese of the residence of the spouses, after having weighted the special circumstances, can grant permission to approach the civil forum.